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FEB 15 2005

**OFFICE OF PETITIONS**

In re Patent No. 6,797,813  
de Waal Malefyt et al.  
Issue Date: September 28, 2004  
Application No. 10/083,720  
Filed: February 28, 2002  
Attorney Docket No. DX0644KBK

: DECISION ON APPLICATION  
: FOR  
: PATENT TERM ADJUSTMENT  
: and  
: NOTICE OF INTENT TO ISSUE  
: CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. § 1.705) (b)," filed August 10, 2004. Patentees request that the initial determination of patent term adjustment be corrected from two hundred eighty-three (283) days to three hundred twenty-two (322) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred eighteen (**318**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

Prior to this decision being rendered, the application matured into a patent. The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a Patent Term Adjustment of three hundred eighteen (**318**) days.

On May 11, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 283 days. On August 10, 2004, patentees timely<sup>1</sup> submitted an application for patent term adjustment (with required fee). Patentees dispute the reduction of 42 days attributed to applicants for failing to respond within three months to the Notice to File Missing Parts of Application mailed April 8, 2002. Patentees state that their response was received on July 11, 2002, and thus, a delay of 3 days should have been entered.

Patentees state that the patent issuing from the application is not subject to a terminal disclaimer.

The reduction of 42 days has been found to be incorrect. A review of the application file reveals that applicants' responses to the Notice to File Missing Parts of Application mailed April 8, 2002, are of record in the application with dates of receipt by the Office of July 11, 2002 and July 15, 2002. In response to the Notice, applicants mailed separately responses to Box Missing Parts (declaration, filing fee, and surcharge) and to Box Sequence Listing (sequence listing). A complete reply was not received until receipt of the portion of the response received July 15, 2002. Thus, the Office should not have assessed applicants a delay of forty-two (42) days. The response was filed outside the three-month period under 37 CFR 1.704(b), but only by 7 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is three hundred eighteen (318) days (325 - 7).

A review of the application history confirms that, after the mailing of the notice of allowance, there were no delays on the part of the Office warranting an adjustment or on the part of the applicants warranting a reduction of the patent term. However, a period of reduction of 50 days was entered for the filing of this application of patent term adjustment. This reduction has been removed. See § 1.704(e).

In view thereof, the patent should have issued with a revised patent term adjustment of three hundred eighteen (318) days.

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<sup>1</sup> PALM records show that the Issue Fee payment was also received in the Office on August 11, 2004.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **THREE HUNDRED EIGHTEEN (318) days.**

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

*Karen Ferriter*

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

Day : Monday  
Date: 2/14/2005

Time: 08:50:22

**PALM INTRANET**

PTA Calculations for Application: <u>10/083720</u>			
Application Filing Date:	<u>02/28/2002</u>	PTO Delay (PTO):	<u>325</u>
Issue Date of Patent:	<u>09/28/2004</u>	Three Years:	<u>0</u>
Pre-Issue Petitions:	<u>0</u>	Applicant Delay (APPL):	<u>92</u>
Post-Issue Petitions:	<u>0</u>	Total PTA (days):	<u>318</u>
PTO Delay Adjustment:	<u>85</u>		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
43	02/14/2005	ADJUSTMENT OF PTA CALCULATION BY PTO	85		
38	09/28/2004	PATENT ISSUE DATE USED IN PTA CALCULATION			
37	09/02/2004	RECEIPT INTO PUBS			
36	09/01/2004	DISPATCH TO FDC			
35	09/01/2004	APPLICATION IS CONSIDERED READY FOR ISSUE			
34	08/11/2004	MAILROOM DATE OF ISSUE FEE PAYMENT			
33	08/10/2004	MISCELLANEOUS INCOMING LETTER		50	33
32	08/13/2004	RECEIPT INTO PUBS			
31	08/11/2004	ISSUE FEE PAYMENT RECORDED			
30	06/02/2004	SEQUENCE FORWARDED TO PUBS ON TAPE			
29	05/24/2004	WORKFLOW - FILE SENT TO CONTRACTOR			
28	05/11/2004	MAIL NOTICE OF ALLOWANCE			
27	05/11/2004	MAIL EXAMINER'S AMENDMENT			
26	05/11/2004	ISSUE REVISION COMPLETED			
25	05/10/2004	EXAMINER'S AMENDMENT COMMUNICATION			
24	05/10/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
23	05/10/2004	NOTICE OF ALLOWABILITY			
22	04/08/2004	DATE FORWARDED TO EXAMINER			
21	04/01/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
20	03/18/2004	MAIL RESTRICTION REQUIREMENT	325		-1
19	03/17/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
18	03/01/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
17	02/17/2004	PRELIMINARY AMENDMENT			

16	10/08/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
15	04/10/2003	CASE DOCKETED TO EXAMINER IN GAU			
14	07/16/2002	PRELIMINARY AMENDMENT			
13	08/20/2002	APPLICATION DISPATCHED FROM OIPE			
12	08/19/2002	APPLICATION IS NOW COMPLETE		42	7
10	07/15/2002	CRF DISK HAS BEEN RECEIVED BY PREEEXAM / GROUP / PCT			
9	07/15/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	07/30/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
7	04/08/2002	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
5	03/29/2002	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
4	03/27/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	02/28/2002	CRF DISK HAS BEEN RECEIVED BY PREEEXAM / GROUP / PCT			
2	02/28/2002	INITIAL EXAM TEAM NN			

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#### EXPLANATION OF PTA CALCULATION

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